



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill #	SB0488	Title:	Require agencies to cooperate with tribes on cultural resources
Primary Sponsor:	Windy Boy, Jonathan	Status:	As Introduced

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|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
State Special	\$2,080	\$2,080	\$2,080	\$2,080
Revenue:				
State Special	***** Unknown *****			
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: The Department of Fish, Wildlife and Parks estimates it would cost \$2,080 each year for additional operating costs to implement the effects of SB 488. Other agencies were not able to estimate a fiscal impact. No agency could estimate the revenue from fines incurred due to the implementation of SB 488.

FISCAL ANALYSIS

Assumptions:

Office of Public Instruction (OPI)

- The Office of Public Instruction is responsible for preparing curriculum materials for educators to use in implementing Indian Education for All. Instructional coordinators at the OPI rely on *Indian Education for All Essential Understandings* to guide them in the preparation of the curriculum. The people who developed the "Indian Education for All Essential Understandings" represented all seven reservations, the Little Shell Tribe, the Montana Advisory Council on Indian Education (MACIE), Montana University System, the Office of Public Instruction, and Indian educators from many levels of education. Other agencies who have worked with this process include the school districts, the Montana Historical Society,

and the Park Service. MACIE reviews materials overall and individual members look for reviews from their tribal entities.

- The process of developing of curriculum materials will be considerably delayed, and perhaps halted, by the protocols required by SB 488. More time and effort will also be necessary to support the level of communication required by this legislation.

Fish, Wildlife and Parks

- There are seven federal and one state recognized tribes in Montana. Per Section 3(5)(c) of SB 488, the department would implement state-tribal cooperative agreements with the eight tribes in Montana.
- The personal service time of a cultural preservationist and regional park's manager necessary to develop and implement cooperative agreements would be absorbed within existing department budgets.
- Operations costs of travel, mileage, and supplies and materials would be approximately \$520 per cooperative agreement. If eight agreements are completed over the biennium, the department would incur additional operations costs of \$4,160.
- Section 3(7) of the bill states: "A violation of this section is subject to a private right of action for a civil penalty brought by a tribal government in a court of competent jurisdiction. The penalty for a first offense is \$500 and \$1,000 for a second or subsequent offense. Penalties collected under this section must be deposited in the state special revenue account provided for in 90-1-135." The department is unable to estimate the amount of fines that might be levied and collected in any fiscal year.

Fish, Wildlife and Parks

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
<u>Fiscal Impact:</u>				
Fish, Wildlife and Parks				
<u>Expenditures:</u>				
Operating Expenses	\$2,080	\$2,080	\$2,080	\$2,080
<u>Funding of Expenditures:</u>				
State Special Revenue (02)	\$2,080	\$2,080	\$2,080	\$2,080
<u>Revenues:</u>				
State Special Revenue (02)	*****	Unknown	*****	*****
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
State Special Revenue (02)	*****	Unknown	*****	*****

Technical Notes:

Fish, Wildlife and Parks

- SB 488 specifically applies to agencies of state government and its employees. This raises the issue of immunity and if the employee or the agency pays if a violation occurs.

Department of Natural Resources and Conservation (DNRC)

2. The DNRC manages approximately 5.1 million surface acres of state land under the direction of the Board of Land Commissioners. Pursuant to the Montana State Antiquities Act (22-3-421 et seq., MCA), the DNRC has established rules and procedures (ARM 36.2.801-813) to implement the provisions of the act. In part, these rules require the DNRC to identify Antiquities on state land prior to permitting or undertaking a proposed action. The rules also require the DNRC to consult with the State Historic Preservation Officer (SHPO) in order to identify and assess significance of identified cultural and paleontological resources.
3. Section 3 (Page 3, lines 9-14) is unclear how DNRC would determine who the “relevant entity” might be when addressing cultural properties on state lands outside of a reservation boundary.
4. Section 3 it is not clear if the “cultural protocol” is intended to replace or supplement the procedures in ARM 36.2.801-813 through which the DNRC identifies, documents, and gives consideration to cultural and paleontological resources in its land management decision making efforts. It is also unclear if the protocol is intended to be incorporated into the decision making process for projects on state lands.

Sponsor's Initials

Date

Budget Director's Initials

Date